

KEY HIGHLIGHTS OF THE PANDEMIC RESPONSE AND MANAGEMENT BILL, 2020

A pandemic is an infectious disease prevalent over a whole country or across international borders.

This Bill provides a legal framework for a coordinated response and management of activities during a pandemic, temporary measures to be applied and relief during a pandemic.

The Bill gives provisions of notification and declaration of a pandemic by the President upon receipt of recommendation from the Cabinet Secretary and in consultation with the National Security Council. The Bill proposes to establish a Pandemic Response Fund which shall be used in putting in place containment measures of the spread and impact of the pandemic. Further, upon declaration of end of the pandemic by the President vide a notice published in the Kenya Gazette, this Fund shall be wound up within one month of publication of the said notice.

The Bill has provided for socio – economic protective measures which include:

1. Section 25 provides for tax incentives where the Cabinet Secretary (Finance), may with approval of Parliament, introduce measures to cushion affected persons for the duration of the pandemic.
2. On loans and mortgages, the Bill proposes measures that shall apply up to three months after the pandemic:
 - a. A borrower and the respective lending institution shall enter into an arrangement to review repayment modalities;
 - b. Penalties shall not be imposed on a defaulter; and
 - c. A defaulter shall not be listed by a credit reference bureau.
3. On contractual obligations, where a contract is entered into before declaration of the pandemic and pandemic affects performance of contractual obligations, the Bill prohibits the following:
 - a. Levying of distress or execution;
 - b. Enforcement of security over movable and immovable property used for the purpose of a trade, business or profession;
 - c. Repossession of any goods used for the purpose of a trade, business or profession; or
 - d. Termination of lease or licence of immovable property in connection with non-payment of rent or other monies.
4. The Bill has cushioned tenants from immediate execution of rent distress. It proposes that where a pandemic has affected the financial capacity of a tenant to meet their obligations in the Tenancy Agreement:
 - a. The tenant shall give a notice in writing to the landlord or contracting party that they are unable to meet their obligations because of the pandemic;
 - b. Upon receipt of a said notice, the contracting parties shall enter into an agreement on how the tenant shall meet their obligation at the end of the pandemic.

However, the Cabinet Secretary responsible for matters relating to housing may, with the approval of Parliament, provide measures to cushion both landlords and tenants.

5. The Bill proposes the following regarding labour relations, where a pandemic adversely affects the ability of an employer to pay salaries or wages:
 - a. An employer shall not terminate a contract of service or dismiss an employee; and
 - b. An employer shall not coerce an employee to take salary cut.

Also, it provides that an employer who is unable to pay salaries or wages shall permit an employee to take a leave of absence without pay for the duration of the pandemic. It is worth noting that the Senate Ad Hoc Committee on COVID-19 recently stated that it will not halt its plan to proceed with the Pandemic Response and Management Bill (2020) despite the inclusion of some of the core issues it seeks to address in the Employment (Amendment) Act passed by the National Assembly. On employment matters, this Bill only addresses pay cuts, termination and unpaid leave. However, both the Legislature and Executive need to take an integrated legislative approach to protect the interests of both employers and employees against anticipated litigation after the pandemic.

6. The “*common mwananchi*” has been cushioned through reduced rates on utilities. This is a great move that will cover those earning below the minimum wage to have access to basic utilities in their homes. The Bill proposes waiver of water and electricity charges for identified vulnerable persons. Water and electricity service providers may adjust the tariff rates in order to reduce utility charges and withhold disconnections for non – payment of utility bills.
7. The Bill provides for prompt IT – based solutions where the government directives may affect the conduct of businesses or physical meetings. The Bill proposes that meetings may be held remotely via electronic means and resolutions made therefrom shall be valid. It allows for remote Court proceedings and the Chief Justice may make rules for conduct of such proceedings. Further, it allows for heads of institutions to make guidelines on how to transact business remotely.
8. County governments may suspend fees payable on renewal of trade licenses and payment of property rates during the pandemic.

The Bill provides for the following penalties:

- a. Obstruction of a public officer in the discharge of their function – Fine not exceeding Kshs.1,000,000; imprisonment for a term not exceeding 1 year or both.
- b. Making false claim for purposes of obtaining any relief, assistance, repair, reconstruction of other benefits from a public office – Fine not exceeding 1,000,000; imprisonment for a term not exceeding 1 year or both.
- c. Misappropriation of relief money or materials - Fine not exceeding 10,000,000; imprisonment for a term not exceeding 10 years; or both
- d. Any other offence under the Act where a penalty is not provided – Fine not less than Kshs.100,000 or a fine not exceeding twice the value of goods/products or imprisonment of a term not exceeding 6 months or both.

Finally, the Bill provides for the establishment of an ad – hoc committee, National Pandemic Response Committee whenever a pandemic is declared. The Committee is obligated to spearhead the implementation of activities aimed at mitigating and curbing the spread of the pandemic and negative impacts arising therefrom such as COVID – 19.

We hope you are all keeping safe during this pandemic because this too shall pass!

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